

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

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In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC., <u>et al.</u>	:	Case No. 08-35653-KRH
	:	
Debtors.	:	Jointly Administered
	:	Judge Kevin R. Huennekens
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**JOINDER OF GALLERIA PLAZA, LTD. TO LIMITED OBJECTION
OF DICK'S SPORTING GOODS, INC. TO ORDER PURSUANT TO
11 U.S.C. SECTIONS 105(a), 365(a) AND 554 AND FED. R. BANKR. P. 6006
AUTHORIZING REJECTION OF UNEXPIRED LEASES AND SUBLEASES
OF NONRESIDENTIAL REAL PROPERTY AND ABANDONMENT
OF PERSONAL PROPERTY EFFECTIVE AS OF THE PETITION DATE**

Galleria Plaza, Ltd. ("**Galleria**") by and through its undersigned counsel, hereby submits this joinder (the "**Joinder**") to the Limited Objection to the Debtors' Motion for Order Pursuant to 11 U.S.C. sections 105(a), 365(a), and 554 and Fed. R. Bankr. P. 6006 Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Abandonment of Personal Property Effective as of the Petition Date (the "**Dick's Limited Objection**").

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Counsel for Galleria Plaza, Ltd.

1. Dick's Limited Objection is Docket #275. Galleria shares the concerns raised in Dick's Limited Objection regarding the Debtors' request to reject the Galleria Lease as of the November 10, 2008 (the "**Petition Date**") and the refusal to pay November rent.

2. The space is not vacant - it is occupied by Dick's, which paid its November rent to the Debtors before the Petition Date. If the Debtors are attempting to reject the lease as of the Petition Date, and keep the November rent, the Debtors will receive a windfall at the expense of both the landlord and the subtenant. Section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the "**Bankruptcy Code**") was not designed to permit such a result, and the Court should not allow it.

3. The Petition Date was not November, 1, 2008, yet Debtors seem to be treating that date as the petition/rejection date. Instead, the obligations under the lease accrued on November 1, 2008, and the Petition Date did not occur until November 10, 2008, at which time the motion to reject ("**Rejection Motion**") was filed. As the November rent was due and payable on November 1, 2008, Dick's paid the same, along with pro-rata taxes, to Debtor's care on or before that date, and Debtors did not file their Rejection Motion until much later, Debtors are not entitled to a ten (10) day free ride, and must turn over the full amount of the November payment to Galleria Plaza, Ltd.—over \$87,000.00 that does not rightfully belong to them. *See In re Geonex Corp.*, 258 B.R. 336, 339 (Bankr. D. Md. 2001) (payments in a lease rejection situation are not based upon a benefit received by the estate, but rather the protection of the landlord). Anything else would be inequitable.

4. Galleria respectfully requests that this Court treat this Joinder as a written memorandum of points and authorities or waive any requirement that this Joinder be accompanied by a written memorandum of points and authorities as described in Rule 9013-

1(H)(2) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Eastern District of Virginia.

WHEREFORE, Galleria Plaza, Ltd. respectfully requests that the Rejection Motion be denied to the extent that it seeks to reject the Prime Lease and Sublease as of the Petition Date without requiring the Debtors to pay over the November Payments and Tax Payments to the Prime Landlord.

Dated: December 4, 2008
Richmond, Virginia

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2008, a true and complete copy of the foregoing was filed and served electronically using the Court's ECF System and was sent by first class mail, postage prepaid, to the entities at the addresses indicated below:

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